IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 47 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GAJANAND LAXMISHANKAR RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioner

MR.ST MEHTA,ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/02/97 & 27-02-97.

ORAL JUDGEMENT

This appeal arises of an order of conviction recorded by the learned Special Judge, Ahmedabad in Special Case No.2 of 1986 on 18th November, 1986.

It is the case of the prosecution that the accused - appellant was serving as a Senior Clerk in the

office of the Licensing Board in its establishment Branch. In his capacity as the establishment clerk he was entrusted with the work of preparation of the bills of allowances admissible to various employees of the said office. The complainant at the relevant time was a junior Assistant Electrical Inspector serving in the same office. Complainant in his capacity as a Junior Assistant Electrical Inspector was required to travel all around the State for inspection of electrical licences and performance of elevators installed in the multi-storeyed buildings all over the State. He had submitted three bills of travelling allowances and daily allowance for the journey undertaken by him during the months of May, June and July, 1984. It is alleged that the accused in his capacity as establishment clerk raised several objections in respect of the said claims which were satisfied by the complainant. However, further objections were raised by the accused. Accused thus delayed sanctioning of the said claims and payment thereof. On 17th December, 1984 the complainant inquired about the sanctioning of the said claims when he was informed by the accused that the said bills were still pending sanction and if a sum of Rs.101/- were paid to the accused by way of gratification he would see to it that the bills were promptly sanctioned and paid. Feeling exasperated the complainant lodged a complaint before the Anti-Corruption Bureau. Pursuant to the said complaint the Anti-corruption Bureau arranged a trap. According to the complainant on 19th December 1994 accompanied by one of the Panchas went to the accused and offered him amount of gratification. However, the accused being in hurry to leave (it being closing hour of the office) informed the complainant to hand the said money over to one Mr.Mehta from whom he would later on collect the said money and left the office. He also informed that a sum of Rs.198/-being the amount of difference of dearness allowance was received by him and the same may be collected by the complainant on the next day i.e. on 20th December, 1984. On 20th December 1984 the complainant again visited the office and inquired about his travelling allowance bills of the accused. The accused informed the complainant that the amount of difference of Dearness allowance was received by him and it would be paid in the evening. Accused demanded the gratification money also which the complainant said he would pay at the time of receiving the amount of difference of dearness allowance. Accordingly, the complainant again went to the office of the Anti-Corruption Bureau and informed the officers there regarding demand made by the accused. Again a trap was arranged. The complainant accompanied by the Panch No.1

went to the office and claimed the amount of difference of Dearness allowance. The accused had inquired about the amount of gratification which the complainant promptly agreed to pay. Accused paid a sum of Rs.200/to the complainant. Rs.198/- being the amount of difference of dearness allowance and accepted a sum of Rs.101/- from the complainant. He placed the said currency notes of Rs.101/- on his Money Purse. Immediately the A.C.B.Officers entered the premises. Sensing that he was trapped the accused threw away the currency notes of Rs.101/- received by him on the next table from where the said currency notes were collected by the A.C.B.Officers.

The prosecution case has been supported by the evidence of PW.1 complainant exh.6, PW.2 the Dy.Electrical Inspector Shri I.P.Shah, Exh.38, PW.3 Panch Kantilal Mohanlal Exh.48 and PW.4 Police Inspector Yadav Exh.45. The accused pleaded not guilty. It was suggested that the complainant had a grudge against the accused on account of the objections raised by the accused in respect of the claims for travelling allowance made by the complainant. Credibility and veracity of the evidence of the complainant has also been challenged suggesting that he was earlier employed by the Gujarat Electricity Board from where he was removed from service. It was further suggested that the complainant had secured the employment as Junior Assistant Electrical Inspector by suppressing material facts from the Gujarat Public Service Commission which selected him.

27-2-97

The learned Trial Judge considering the evidence placed on the record came to the conclusion that the evidence of the complainant was reliable and was supported by the evidence of the other witnesses. Learned Trial judge after appreciation of evidence held that the charge framed against the accused was proved beyond doubt by the prosecution and thus convicted the accused for offence punishable under sections 161 of the IPC and section 5(1)(d) and 5(2) of the Bombay Prevention of Corruption Act, 1957. The learned Trial Judge sentenced the accused to suffer R.I. for one year and to pay a fine of Rs.100/- in default to suffer further R.I.for one month.

The learned Advocate Mr.Shethna has appeared for the appellant accused. He has submitted that if tested on the touch stone of the preponderance of probability

the allegations made against the accused shall necessarily fail. He has submitted that the complainant had a grudge against the accused and has made up a story against the accused which is highly improbable. In support of his contention he has highlighted the following factors:

(a)The amount of alleged gratification i.e. Rs.101/- makes a substantial part of the amount of Rs.198/- which was paid to the complainant and nobody would demand such a high rate of gratification;

(b)It is highly improbable that a Government servant would demand illegal gratification from a colleague who has been serving along with him in the same office and is sitting in the same room;

(c)If gratification were really demanded the accused would have deducted a sum of Rs.101/- from the amount of D.A. difference i.e. Rs.198/- and would have paid only Rs.97/- to the complainant;

(d)The same Panch Kantilal had accompanied the complainant on 19th December, 1984 and 20th December, 1984. The presence of unknown person along with the complainant would have put the accused on guard had he really demanded illegal gratification;

(e) As a signal to the raiding party the complainant had taken off his sweater and had put it on again. Such a behavior also would have put the accused on guard;

(f)No police officer would instruct the complainant to call the accused at a tea shop for payment of amount of gratification as is alleged to have been done in the present case;

(g) The complainant was required to be paid the amount of allowance legitimately payable to him and there was no question of demanding any gratification for payment of the complainant's legitimate claim.

Mr.Shethna has next contended that the prosecution case has not been supported by any independent evidence. He has submitted that undoubtedly there were other employees working in the same office room who must have witnessed the incident. However, none of them has been examined by the prosecution and in the absence of independent evidence the prosecution case must fail. He has also contended that in the present case it

is alleged that anthracene powder was used for detection of crime. However, use of anthracene powder has been deprecated by the Supreme Court and by this court long ago and the results based on the detection by anthracene powder cannot be relied upon. He has also submitted that the complainant was of doubtful character and his testimony lacked credibility. His testimony could, therefore, not have been relied upon by the court. In support of his contentions he has relied upon judgments of the Supreme Court in the matter of Habeeb Mohammad v. State of Hyderabad(AIR 1954 S.C.51); Gulam Mahmood A. Malek v. The State of Gujarat(AIR 1980 S.C.1558); Sita Ram v. The State of Rajasthan(AIR 1975 S.C.1432); Raghbir Singh v. State of Punjab (AIR 1976 S.C.91); Ramsing Bhadrasing v. State (1 G.L.R.138); Nathalal Govindji Vaghela v. State of Gujarat (20(2) GLR 190); Mohmoodkhan Mahboobkhan Pathan v. State of Maharashtra (JT 1997(2) 232) and Tarachand v. State of Maharashtra (AIR 1962 S.C.130).

Learned Additional Public Prosecutor Mr.Mehta has opposed this appeal and has submitted that the learned Trial judge has correctly appreciated the evidence led in course of the trial and has rightly convicted the accused. He has submitted that there was no reason to doubt the credibility either of the complainant or of the Panch witness. The evidence of the complainant has been squarely corroborated by the evidence of Panch witness and the Police Officer. He has further submitted that accused had abused his power of his office and had demanded and accepted the gratification as a motive to pass the travelling allowance and daily allowance bills submitted by the complainant. The accused was, therefore, rightly convicted by the learned Trial Judge. He has further submitted that there was no need to examine independent witness in support of the prosecution case. In support of his contentions he has relied upon the judgments of the Supreme Court in the matters of State of Gujarat v. Ragunath Vamanrao Baxi (AIR 1985 S.C.1092); Hazari Lal v. The State(Delhi Admn.) (AIR 1980 S.C.873); Swarupchand v. State of Punjab (AIR 1987 S.C.1441) and V.D.Jhingan v. State of Uttar Pradesh (AIR 1966 S.C.1762).

The complainant had submitted that three bills for the travelling allowance and the daily allowance admissible to him for the months of May, June and July 1984. The said bills were for the sum of Rs.578.40; Rs.462.10; and Rs.346.20 respectively. Thus his total claim came to around Rs.1400/-. Upon perusal of the

correspondence Exs.10,, 11 and 12, 13 and 14 it appears that the said bills remained unattended for a long time. Some objections were raised against the said bills which were complied with by the complainant. Inspite of the said compliance the bill amounts were not paid to the complainant and the complainant had to make a representation to the Secretary Licensing Board under his letter dated 12th December, 1984 (Exh.10). It was suggested in the said letter that the deliberate delaying tactics were adopted by the establishment clerk. The complainant had to make a direct complaint about non-payment of his allowance referred to hereinabove to the Chief Electrical Inspector. His immediate superior officer, Lift Inspector had also issued warning against the complainant of such direct approach to the superior officer. Thus upon perusal of the above-referred documents exhs.10 to 14 it is apparent that the complainant was insistent upon paying up of his bill amount while accused had been delaying the same. On 17th December the complainant once again went to the accused and inquired about his bills for travelling allowance and daily allowance. The accused had informed him that there was interpolation in his bill for the month of June. However, he would see to it that his bills for the months of May and July were promptly sanctioned and paid. He, therefore, demanded a sum of Rs.101/- by way of gratification. The complainant on 19th December, 1984, went to the office of the Anti-Corruption Bureau and lodged a complaint regarding demand of gratification by the accused. Pursuant to the said complaint, a trap was arranged by the A.C.B.Officers. The complainant accompanied by Panch Kantilal went back to his office and inquired about his bills. The accused informed him that the bill money was not yet received. The complainant invited the accused at the tea shop. The complainant and the Panch witness Kantilal waited for the accused. However, he did not appear. The complainant, therefore, went back to the office and saw the accused leaving the office. The complainant again inquired about his bill amount. Accused informed him that the bill amount would be received on the next day and he may pay Rs.101/- on the next day. The complainant informed the accused that he would not be available on the next day. So accused told the complainant to pay the said amount to Mr.Mehta. Since he was in hurry to leave he did not wait further and left the office. On the next day again the complainant inquired about his bill amount. Accused demanded a sum of Rs.101/- again and informed that Rs.198/- being the difference of D.A. was received which the complainant may collect in the evening. The complainant informed him that he would pay the sum of

Rs.101/- out of Rs.198/that may be received by him. Again the complainant went to the office of the Anti-Corruption Bureau and accompanied by the panch witness Kantilal and the raiding party went to his office in the evening. In the presence of Kantilal accused paid a sum of Rs.200/-to the complainant and the complainant signed the receipt for Rs.198/-. The complainant thereafter paid the currency notes worth Rs.101/- which was received by the accused. Accused placed the said currency notes on his money purse and demanded Rs.2/back from the complainant. At that time upon signal given by the complainant the raiding party entered the office room and sensing that he was trapped the accused threw away the currency notes which landed on the next table. It was ultimately found that the currency notes which were earlier treated by anthracene powder were lying on the next table where one Mr.Mehta used to sit and the palm and fingers of the accused and his money purse were stained with anthracene powder. The currency notes were the same as were given by the ACB officers and were treated by anthracene powder.

This evidence of the complainant is consistent with the complaint lodged by him to the Anti-Corruption Bureau and the Panchnama drawn by the ACB officials. The evidence of the complainant is also supported by the panch witness Kantilal and the Police Inspector Yadav. The minor discrepancies found in the evidence of the above-referred three witnesses has been dealt with by the learned Trial Judge and the learned Trial judge has correctly come to the conclusion that such discrepancies were not material and did not affect the case of the prosecution.

The sequence of events is not such which should make the prosecution case unacceptable. Except that the complainant had to make complaint about the delay in processing his bills, he had no enmity against the accused. Obviously the accused delayed the payment so as to exasperate the complainant into paying gratification amount to the accused. It was quite likely that accused may not accept the money in the office in presence of other employees, in such an eventuality he could have been called at the tea-shop which was frequented by the employees. Behaviour of all concerned appears to be quite natural.

It was suggested that the members of the Panch were selected by the complainant himself and were known to him. However, the attempt has failed. It is found that the Panch were called for by the Police Officer

Yadav and not by the complainant. The complainant was not known to the members of the said Panch. Thus, there is no reason to doubt the testimony of the Panch who was an independent witness.

A suggestion was made that the complainant had secured his present employment as Junior Assistant Electrical Inspector by suppressing the fact of his having been employed by the Gujarat Electricity Board and his being removed from the employment by the said Board. The suggestion has been falsified by the testimony of the defence witnesses. Defence witness No.1 a Section Officer of the Gujarat Public Service Commission has admitted in his cross examination that if one were appointed as a trainee the period spent under training is not considered as an experience. The defence witness No.2 the Executive Engineer of the Gujarat Electricity Board in his cross examination has admitted that the complainant was appointed as trainee Junior Engineer in the Board. Thus, the learned Trial Judge has rightly come to the conclusion that the testimony of the complainant was dependable and the credibility and the veracity of his testimony could not be questioned. In view of the above evidence of the complainant supported by the independent witness i.e. Panch Kantilal and the Police Inspector Yadav the learned Trial Judge has rightly convicted the accused. In the matter of Habeeb Mohammad(supra) the court found that:

" one Bia-Bani who was a top ranking police officer present at the scene , was a material witness in the case and it was the bounden duty of the prosecution to examine him. .... The witness was at the time of the trial in charge of the Police Training School and was certainly available. In our opinion, not only does an adverse inference arise against the prosecution case from his nonproduction as a witness - - - but the circumstance of his being withheld from the court casts a serious reflection on the fairness of the trial. It seems to us that the appellant was considerably prejudiced in his defence by reason of this commission....."

In my opinion, this ruling does not lend support to the defence in the present case. In the present case it is not found that any material witness has been withheld from the court. Nor is it even alleged that on account of withholding of any witness the appellant's defence has been prejudiced in any manner.

In the matter of Gulam Mahmood A.Malek(supra) the Supreme Court held that though the Panch witness corroborates the complainant regarding recovery the delay in effecting the recovery of the money, failure of examination of independent witness who were admittedly in the court hall and in the next room to which the accused was taken and the recovery made makes the entire prosecution case unacceptable. In that case, the character of the complainant was found to be tainted and his testimony lacked credibility. The said testimony was not corroborated by any independent witness other than the Panch witness who was a student and was serving in an office situated in the same building as that of Anti-Corruption Department. He was found to be present in the office hours before the normal office hours. The above judgment does not lay down any proposition of law that in every case the complainant's testimony should be corroborated by an independent witness other than the Panch witness. In the present case, as discussed above, neither the character of the complainant is found to be tainted nor his testimony lacked credibility or veracity as alleged by the defence. In the circumstances, the testimony of the complainant which is corroborated by the testimony of the panch witness and the police officer cannot be rejected for want of examination of any other independent witness. In the matter of Sita Ram (supra) the court reversed the order of conviction based on the presumption under section 4(1) of the Prevention of Corruption Act, 1947 on the ground that the demand of bribe by the accused had not been held to be true. Same is the view expressed by the Supreme Court in the matter of Mohmoodkhan Mahboobkhan Pathan(supra). On the facts of the present case, where the demand of illegal gratification and acceptance of the same by the accused has been established, the principles laiddown in the said judgment cannot be applied. In the matter of Raghubirsingh(supra) the court has laid emphasis on the need for securing really independent and respectable witnesses so that the evidence with regard to the raid inspires confidence that being the only safeguard for the protection of public servant against whom a trap may have been laid. In the present case, the Panch witnesses though was not highly placed member of the society has been proved to be independent and respectable witness and testimony of the panch witness has been found to be reliable. The conviction based on the testimony of such witness cannot be said to be erroneous.

This court in the matter of Ramsingh

Bhadrasingh(supra) had an occasion to examine the dependability of the anthracene powder test. The court held that, " it was the duty of the prosecution to prove by means of expert evidence or books of science the nature of anthracene powder, the manner in which its presence can be detected and the test to be applied for the purpose." In that case, the complainant was an illiterate person and it was not brought on the records of the matter whether he was explained the significance of the use of the anthracene powder and the results to be expected thereof. Further the said matter was decided as far back as in the year 1960. Over the years anthracene powder test is well accepted manner by which a crime can be detected. Further in the present case the complainant as well as the panch witness were explained the significance of the use of the anthracene powder and the result that was expected of use of the said powder. In my view, therefore, the prosecution case cannot be defeated on account of the use of anthracene powder as has been contended by Mr.Shethna. In the matter of Nathalal Govindji also for the very reasons the court has recommended use of phenolphthalein powder instead of anthracene powder for crime detection. However, for the reasons stated hereinabove, the prosecution cannot be said to have failed in proving its case merely because anthracene powder is used for crime detection. In the matter of State of Gujarat v. Ragunath Vamanrao Baxi (supra)) the court has held that, "the court is not entitled to reject the evidence of a witness merely because they are government servants who in the course of the duties or even otherwise, might have come in contact with investigation agencies and who might have been requested to assist investigating agencies. For that matter, it would be wrong to reject the evidence of police officers either on the mere ground that they are interested in the success of the prosecution". Applying a similar test the testimony of the panch witness or the police Inspector Yadav who is otherwise found to be reliable and truthful cannot be rejected merely because they are a government servant and a police officer. Similarly in the matter of Hazari Lal(supra)) also the Supreme Court held that if the evidence of the police officer who laid the trap is found entirely trust worthy, there is no need to seek any corroboration. The court proceeded to reject the contention raised by the defence that the persons holding the clerical posts and the like should not be called as panch witnesses as such witnesses could not be called independent. The court held that," the responsibility and the veracity of a witness is not necessarily dependant upon his status in life and we are not prepared to say that the clerks are less truthful and

more amenable than their superior officers".

For the reasons recorded hereinbefore, I hold that the prosecution has proved its case that the accused had demanded illegal gratification and accepted the amount of such gratification from the complainant. I, therefore, confirm the order of conviction recorded by the trial Judge. The appeal is dismissed.

The appellant has been on bail. The bail bonds are cancelled. The appellant be taken in custody.

At this stage the learned Advocate Mr.Shethna has contended that the incident in question is that of December 1984 and the appellant has lost his job on account of the said incident. Considering the agony of the trial suffered by the appellant, his social responsibilities and the time elapsed the sentence be reduced to fine alone. In support of his contention he has relied upon the judgment in the matter of B.C.Goswami v. Delhi Administration (AIR 1973 S.C. 1457). I am afraid, there is nothing in the said judgment which should support the request made by Mr.Shethna. If sentence is reduced to fine alone, the criminal trial and the punishment thereof would lose its deterrent effect. I, therefore, reject the request made by Mr.Shethna. Mr.Shethna then requested that the appellant be granted twelve weeks' time from today to surrender . The request is granted .

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